

traverse or answer the petitioner's allegations as to his language qualifications.

In my opinion the answer to the preliminary objection is to be found in the provisions of Order 5(d) itself. This Order is as follows:

"5. Subject to the provisions of the Act, a person shall be disqualified for being a Councillor if—

xxx xxx xxx xxx

(d) he is not able to speak and, unless incapacitated by blindness or other physical cause, is not able to read and write the Malay or English language with a degree of proficiency sufficient, in the opinion of the State Secretary or any person appointed by the State Secretary in that behalf, to enable him to take an active part in the proceedings of the Council;"

The degree of proficiency required of a candidate is not that of any standard or academic test. The final arbiter on the question is the State Secretary or some other person appointed by the State Secretary in that behalf. Therefore, in the absence of any evidence that the Returning Officer at the Bentong election was a person so appointed by the State Secretary for Pahang, he clearly had no authority whatsoever to decide whether the respondent or any other candidate was "disqualified under section 6 of the Act from being a Councillor" (*vide* para. (e) of regulation 11(1) of the Local Government (Conduct of Elections) Regulations, 1960).

In other words, the effect of Order 5(d) read with regulation 11(1)(e) is that, while the Returning Officer at local government elections is competent to give an immediate and final decision on any of the grounds of disqualification specified in paragraph 2 of the First Schedule to the Local Government Elections Act, 1960, any decision involving the language disqualification must be stayed pending the verdict of the State Secretary, or his appointee, as to the candidate's linguistic proficiency. If delay results from the provisions of Order 5(d), it cannot be helped, since an obvious solution offers itself by appointing the Returning Officer to conduct the language test. Any argument *ab inconvenienti* is irrelevant. The result follows that, because the decision was not his to make, the Returning Officer in this case quite rightly announced that he was not competent to conduct the language test and took no action on the objection. Refraining from making any decision on the objection is not the same thing as overruling the objection, even if the petitioner had said by mistake that his objection had been overruled. As the Returning Officer had not arrogated to himself competency to decide on the objection, I hold that regulation 11(5), which states that "the decision of the Returning Officer shall be final and conclusive . . . and shall not be called in question in any court," has no application whatsoever.

I am aware that in coming to the above conclusion I am not in accord with the opinion of Adams J. in *Yap Choon Kong & Ors. v. The Returning Officer, Klang & Ors.* ⁽¹⁾, but, with all respect, I take a different view for the reason that I am unable to agree with the arguments of Dato Jackson in that case.

Section 32 of the Election Offences Ordinance, 1954, provides for the election of a candidate at any election to be declared void on an election petition on any of five grounds which may be proved to the satisfaction of the Election Judge. One of these grounds, set out in paragraph (e), is "that the candidate was at the time of his election a person disqualified for election." Since I hold that regulation 11(5) of the Local Government (Conduct of Elections) Regulations, 1960 has no application, I overrule the respondent's objection to the jurisdiction.

The hearing of the petition will be resumed on a date to be fixed. In the meantime, it is ordered that the State Secretary, Pahang, appoint the earliest convenient date and place for testing the respondent's linguistic proficiency, either by himself or by some other person appointed by him in that behalf.

Costs reserved.

Order accordingly.

Solicitors: Allen & Gledhill; Braddell & Ramani.

PANG PO & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Suffian J.) June 7, 1962]

[K.L. — Criminal Appeal No. 19 of 1962]

Customs and Excise — "Uncustomed goods" — "Import" — Goods concealed in vessel in territorial waters — Irrebuttable presumption — Goods in transit — Customs Ordinance, 1952, ss.2, 43, 105(3) and 131(1)(d). Criminal Law and Procedure — Sentence — Transient offenders.

The appellants were two firemen on the *Straat Mozambique*, which was on her way from Japan to South America. In Japan the appellants accepted certain goods from a person to be delivered to another person at the port of Santos in South America. The existence of these goods on the boat was not known to the captain of the ship, and none of them appeared in the ship's manifest or in the list of dutiable goods in the possession of the crew signed by each of them. On December 21, 1961, the ship called at Port Swettenham and these goods were found by the Customs hidden in the cofferdam tank in the engine room. The appellant each made a confession admitting possession of these goods but stated that they were not meant to be imported into Malaya as they were to be delivered to someone in Santos. On these facts they were jointly convicted of two offences, of being in possession of uncustomed goods contrary to section 131(1)(d) of the Customs Ordinance, 1952.

Held: in this case all the prosecution need prove were: (a) possession, and (b) the offending goods were uncustomed goods. As possession was admitted and an irrebuttable presumption having arisen that the goods were uncustomed goods under section 105(3) of the Ordinance the appellants were rightly convicted.

CRIMINAL APPEAL.

Lall Singh Muker for the appellants.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian J.: The two appellants were firemen on the *Straat Mozambique*. The boat set out

from Japan to go to South America. In Japan they accepted the goods, the subject of the two charges, from a person to be delivered to another person at the port of Santos in South America. The existence of these goods on the boat was not known to the captain of the ship. None of them appeared in the ship's manifest or in the list of dutiable goods in the possession of the crew signed by each of them. On 21st December, 1961, the ship called at Port Swettenham and these goods were found by the Customs hidden in the cofferdam tank in the engine room. The two appellants each made a confession admitting possession of these goods but stating that they were not meant to be imported into Malaya as they were to be delivered to someone in Santos.

On these facts the two accused were jointly convicted of two offences, of being in possession of uncustomed goods contrary to section 131(1)(d) of the Customs Ordinance No. 42 of 1952.

Inche' Lall Singh, for the appellants, argued that as the goods had not been imported and were *bona fide* in transit, the conviction was wrong.

I have considered this matter with some care and have come to the conclusion that the appeal should be dismissed.

"Import" means to bring into the Federation by sea, but according to the proviso to the definition of "import", goods *bona fide* in transit shall not be deemed to be imported. This is however subject to the important qualification "unless they are or become uncustomed goods", in which event they become imported goods.

But in any event there is no need to consider whether or not the goods have been imported, because all the prosecution need prove are: (1) possession and (2) the offending goods were uncustomed goods. Possession is admitted, but were the goods uncustomed? "Uncustomed goods" means goods in respect of which a breach of the provisions of the Ordinance or of any subsidiary legislation made thereunder has been committed. All these definitions are in section 2. Section 43 provides "if goods, other than *bona fide* ship stores, are found by a proper officer of Customs in any vessel in territorial waters and such goods are not correctly accounted for in the manifest or other documents which ought to be on board such vessels, then such goods shall be deemed to be uncustomed goods....." Sub-section (3) of section 105 provides "if any goods be found concealed on board any vessel or aircraft, they shall be deemed to be uncustomed goods."

These two presumptions are irrebuttable, but it is doubtful if section 43 applies as it is not clear in what document which ought to be on board the vessel the offending goods should have been accounted for. But section 105(3) certainly applies and there is no doubt that the goods are uncustomed goods because they were found concealed on board the boat, even though it is undisputed that the appellants did not mean to import them into Malaya.

A Possession being admitted, an irrebuttable presumption having arisen that the offending goods were uncustomed goods and the appellants having elected to say nothing, they were in my view rightly convicted and I accordingly dismiss their appeal.

B As regards sentence, Inche' Lall Singh suggested that as the appellants were foreigners who could not pay their fine it would be futile to feed them at the taxpayer's expense and I might therefore reduce the term of imprisonment in lieu. On the facts of this case, I see no reason to interfere, the only concession I make to the appellants being transients is to make the imprisonment in lieu, effective from the date of their arrest.

Appeal dismissed.

Solicitors: Lovelace & Hastings.

D LOW SWEE FONG v. GAMMON (MALAYA) 1959 LTD.

[O.C.J. (Wee Chong Jin J.) June 22, 1962]

[Singapore — Suit No. 72 of 1962]

E *Workmen's Compensation Ordinance (Cap. 157), s.20(a) — "Recover" — Partial recovery of workmen's compensation — Whether bar to recovery of damages against 3rd party.*

Damages — Serious personal injuries — Quantum of damages.

F The plaintiff, a 52-year old lorry driver, was seriously injured by a motor van driven by a servant of the defendants, and as a result of the accident he was permanently incapable of working. The defendants admitted negligence but denied liability on the ground that the plaintiff had recovered compensation payable under the Workmen's Compensation Ordinance. It was urged by the defendants that partial recovery of workmen's compensation was a bar to recovery of damages against a third party.

Held: there was no evidence that the moneys the plaintiff received from his employer were received by him as workmen's compensation payments.

G *Obiter*: the word "recover" in section 20 of the Workmen's Compensation Ordinance should be construed as recover as a whole and not in part.

Quantum of damages considered.

[Editorial Note: Appeal in this case was discontinued.]

H Cases referred to:—

- (1) *Day v. Furnival & Co. Ltd. & Anor.* 41 B.W.C.C. 319.
- (2) *Aldin v. Stewart* 1916 S.C. 13.
- (3) *Reid v. Stevenston* 21 B.W.C.C. 576.
- (4) *Smith v. The Commonwealth Oil Refineries Ltd.* 60 C.L.R. 141.

I SUIT.

Denis Murphy for the plaintiff.

P. Coomaraswamy for the defendants.

Cur. Adv. Vult.

Wee Chong Jin J.: The plaintiff was seriously injured by a motor van driven by a servant